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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 AMA Multimedia LLC,

10 Plaintiff,

11 v.

12 Sagan Limited, et al.,

13 Defendants.
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No. CV-16-01269-PHX-DGC

ORDER

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16 The Court dismissed this case because Plaintiff AMA Multimedia LLC is bound
17 by the forum selection clause of the Content Partner Revenue Sharing Agreement
18 (“CPRA”). Doc. 126. Defendants Sagan, Ltd., Cyberweb Ltd., Netmedia Services, Inc.,
19 GLP 5, Inc., and David Koonar (collectively “Defendants”) now seek an award of nearly
20 \$860,000 in attorneys’ fees and costs. Doc. 133. The Court will deny the motion.¹

21 The Court’s local rules require parties to identify the authority under which they
22 seek to recover attorneys’ fees. LRCiv. 54.2(c)(1)-(2). Defendants seek an award of fees
23 under § 10.5 of the CPRA. Doc. 133-1 at 4. The Court concludes, however, that
24 Defendants have not carried their burden of showing that they are entitled to fees under
25 this provision.
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28 ¹ The parties’ request for oral argument is denied because the issues are fully
briefed and oral argument will not aid in the Court’s decision. *See* Fed. R. Civ. P. 78(b);
Partridge v. Reich, 141 F.3d 920, 926 (9th Cir. 1998).

1 Section 10.5 provides that it “shall be governed by and construed in accordance
2 with the laws of Barbados.” Doc. 27-3 at 30, § 10.5. Indeed, Defendants obtained
3 dismissal of this case by arguing that it must be litigated in Barbados. In their motion for
4 fees and their and reply, however, Defendants cite no Barbados law regarding contractual
5 attorneys’ fees provisions like § 10.5. They cite no law to show that such provisions are
6 enforceable under Barbados law. Nor do they provide any Barbados authority on the
7 various issues addressed in the parties’ briefing, such as whether this case arose out of the
8 CPRA, whether Defendants’ motion to dismiss should be viewed as an “action” as
9 required by § 10.5, or what principles should be applied in determining the amount of
10 fees to be awarded – the appropriate hourly rate, whether duplicative billing is permitted,
11 whether block billing is permitted, and whether the degree of success should be
12 considered in arriving at a reasonable fee amount. Defendants cite Ninth Circuit cases on
13 some of these points, but they say not a word about the requirements or authorization of
14 Barbados law. *See* Docs. 133, 140. As a result, the Court cannot conclude that
15 Defendants are entitled to a fee recovery in this case. They have not carried their burden
16 of showing that they are.

17 The Court notes that it would not be inclined to award anything close to \$860,000
18 even if Defendants had met their burden. Defendants themselves note that only \$127,585
19 of their request was incurred in litigating the forum selection issue. Doc. 133-1 at 13.
20 They do not dispute that their first few motions to dismiss did not even raise this issue, or
21 that those motions necessitated much discovery and motion practice on whether the Court
22 had personal jurisdiction – an issue unrelated to enforcement of the forum selection
23 clause. And Plaintiffs provide reason to doubt whether Defendants’ claimed \$127,585 in
24 fees represents a reasonable sum for the forum selection dispute. But the Court need not
25 decide these issues. Defendants vigorously asserted that this case was to be resolved in
26 Barbados courts under Barbados law, and yet have made no showing that Barbados law
27 would permit them to recover the fees and costs they seek.

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IT IS ORDERED that Defendants' motion for attorneys' fees (Doc. 133) is **denied.**

Dated this 24th day of April, 2017.



David G. Campbell
United States District Judge